



DEPARTMENT OF HEALTH AND HUMAN SERVICES
Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval
Washington Medicaid State Plan Amendment (SPA)
17-0027

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing: Reconsideration of disapproval.

SUMMARY: This notice announces an administrative hearing to be held on August 9, 2018, at the Department of Health and Human Services, Centers for Medicare & Medicaid Services, Division of Medicaid & Children's Health, Seattle Regional Office, 701 Fifth Avenue, Suite 1600, Seattle, WA 98104 to reconsider CMS' decision to disapprove Washington's Medicaid SPA 17-0027.

DATES: *Closing Date*: Requests to participate in the hearing as a party must be received by the presiding officer by **[insert date 15 days after publication in the Federal Register]**.

FOR FURTHER INFORMATION CONTACT:

Benjamin R. Cohen, Presiding Officer
CMS
2520 Lord Baltimore Drive
Suite L
Baltimore, Maryland 21244
Telephone: (410) 786-3169.

SUPPLEMENTARY INFORMATION:

This notice announces an administrative hearing to reconsider CMS' decision to disapprove Washington's Medicaid state plan amendment (SPA) 17-0027, which was submitted to the Centers for Medicare & Medicaid Services (CMS) on August 22, 2017 and disapproved on May 14, 2018. This SPA requested CMS approval to add coverage and reimbursement of

services provided by Dental Health Aide Therapists (DHATs) under the Other Licensed Practitioner (OLP) benefit. Specifically, SPA 17-0027 proposed the coverage and reimbursement of services provided by DHATs only when furnished in a practice setting within the boundaries of a tribal reservation and only when operated by an Indian health program, and proposed to make coverage of DHAT services available only to members of a federally recognized tribe or those otherwise eligible for services under Indian Health Service criteria. Washington would, therefore, not permit Medicaid beneficiaries to receive Medicaid coverage for DHAT services if they are not members of a federally recognized tribe or otherwise eligible for services under Indian Health Service criteria.

The issues to be considered at the hearing are whether Washington SPA 17-0027 is inconsistent with the requirements of:

- Section 1902(a)(23) of the Social Security Act (the Act) because it would restrict access to services provided by a DHAT to a limited group of beneficiaries, and it would also prevent beneficiaries from receiving DHAT services from similarly qualified dental services providers that provide services outside the boundaries of a tribal reservation or that are not Indian health programs.
- Section 1902(a)(10)(A) of the Act because it was unclear whether DHATs must be supervised by a licensed professional consistent with the requirements of the OLP benefit, and because CMS was therefore unable to determine whether DHAT services are “medical assistance” consistent with 1902(a)(10)(A) and 1905 of the Act.

Section 1116 of the Act and federal regulations at 42 CFR Part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish in the Federal Register a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the state Medicaid agency of additional issues that will be considered at the hearing, we will also publish that notice in the Federal Register.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Washington announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. MaryAnne Lindeblad

Director

State of Washington, Health Care Authority

626 8th Avenue PO Box 45502

Olympia, WA 98504-5050

Dear Ms. Lindeblad:

I am responding to your June 8, 2018 request for reconsideration of the decision to disapprove Washington's State Plan amendment (SPA) 17-0027. Washington SPA 17-0027 was submitted to the Centers for Medicare & Medicaid Services (CMS) on August 22, 2017, and disapproved on May 14, 2018. I am scheduling a hearing on your request for reconsideration to be held on August 9, 2018, at the Department of Health and Human Services, Centers for Medicare & Medicaid Services, Division of Medicaid & Children's Health, Seattle Regional Office, 701 Fifth Avenue, Suite 1600, Seattle, WA 98104.

I am designating Mr. Benjamin R. Cohen as the presiding officer. If these arrangements present any problems, please contact Mr. Cohen at (410) 786-3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. If the hearing date is not acceptable, Mr. Cohen can set another date mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR Part 430.

This SPA requested CMS approval to add coverage and reimbursement of services provided by Dental Health Aide Therapists (DHATs) under the Other Licensed Practitioner (OLP) benefit. Specifically, SPA 17-0027 proposed the coverage and reimbursement of services provided by DHATs only when furnished in a practice setting within the boundaries of a tribal reservation and only when operated by an Indian health program, and proposed to make coverage of DHAT services available only to members of a federally recognized tribe or those otherwise eligible for services under Indian Health Service criteria. Washington would, therefore, not permit Medicaid beneficiaries to receive Medicaid coverage for DHAT services if they are not members of a federally recognized tribe or otherwise eligible for services under Indian Health Service criteria.

The issues to be considered at the hearing are whether Washington SPA 17-0027 is inconsistent with the requirements of:

- Section 1902(a)(23) of the Social Security Act (the Act) because it would restrict access to services provided by a DHAT to a limited group of beneficiaries, and it would also prevent beneficiaries from receiving DHAT services from similarly qualified dental services providers that provide services outside the boundaries of a tribal reservation or that are not Indian health programs.
- Section 1902(a)(10)(A) of the Act because it was unclear whether DHATs must be supervised by a licensed professional consistent with the requirements of the OLP

benefit, and because CMS was therefore unable to determine whether DHAT services are “medical assistance” consistent with 1902(a)(10)(A) and 1905 of the Act.

In the event that CMS and the State come to agreement on resolution of the issues which formed the basis for disapproval, this SPA may be moved to approval prior to the scheduled hearing.

Sincerely,

Seema Verma

Administrator

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18) (Catalog of Federal Domestic Assistance program No. 13.714. Medicaid Assistance Program.)

Dated: July 6, 2018.

Seema Verma,

Administrator,

Centers for Medicare & Medicaid Services

[FR Doc. 2018-14876 Filed: 7/6/2018 4:15 pm; Publication Date: 7/12/2018]